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IN THE

Supreme Court of the United States

October Term, 1967
No. 1073

ELDON O. HALDANE,

Petitioner,

vs.

WILHELMINA HELEN KING CHAGNON; HORACE N. FREEDMAN; LEONARD S. SANDS; GORDON THOMPSON; WILFRED H. TOMLIN; ALBERT D. MATTHEWS,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Brief for Respondent Gordon Thompson in Opposition.

Statement.

Petitioner instituted the within action in the United States District Court for the Southern District of California, Central Division, on January 23, 1966. In his complaint, he alleged that all of the named respondents had participated in a conspiracy to deprive him of equal protection of the laws in violation of 42 U.S.C. §1985(3), (The Civil Rights Act), and the Fourteenth Amendment of the United States Constitution.

With regard to respondents Chagnon, Freedman, and Tomlin, petitioner alleges, among other things, that during divorce proceedings initiated by his former wife in 1961, said respondents conspired to falsely imprison him pursuant to California Welfare and Institutions Code, §5041 *et seq.* In 1964 petitioner brought an action under the same Civil Rights Act against said respondents, and others, and alleged the same events; however, petitioner did not include as defendants Gordon Thompson, Leonard S. Sands, or Albert Matthews. The District Court in that action dismissed the complaint for failure to state a claim upon which relief could be granted, and the Ninth Circuit Court of Appeals affirmed the decision. *Haldane v. Chagnon,* 345 F. 2d 601 (9th Cir. 1965).

The within action is basically a repetition of Mr. Haldane's previous lawsuit; however, certain additional facts and defendants have been added in an apparent attempt to avoid the problems of *res judicata.* Specifically, the additional facts which petitioner has alleged in order to include Thompson and Sands are set forth in Paragraphs 18, 20, 21 and 23 of the complaint. In Paragraph 18, petitioner describes "overt acts" 8 and 9 as follows:

> "Defendants Sands and Thompson substituted themselves into the case [the aforementioned divorce proceedings] at the instigation of Chagnon and Freedman in lieu of Chagnon as attorney of record with full personal knowledge of the felonies committed on the person of plaintiff while the marriage was in full force and effect . . ."

In Paragraph 20, petitioner alleges "overt acts" Nos. 10 and 11 where respondents, Thompson and Sands

> "Did demand and receive in Department 8 of Los Angeles Superior Court judgments for thousands of dollars as attorneys fees against this plaintiff, which sums were later modified drastically downward by the intermediate Court in *Haldane vs. Haldane,* 210 Cal. App. 2d 587."

In Paragraph 21, petitioner describes "overt acts" No. 12 in which

> "Defendants Sands and Thompson recorded in the Official Records of Los Angeles County, Document 5162, Book M947, Pages 651-654 inclusive, being judgment lien of $1,500.00 principal less $120.00 credits before the modifications in *Haldane vs. Haldane,* 210 Cal. App. 2d 587 . . ."

In Paragraph 23, petitioner alleges "overt acts" No. 13 in which Sands and Thompson procured from Judge Roger Alton Pfaff a "purported final decree based on a false affidavit" in the divorce action.

Thus, the overt acts by which petitioner attempts to connect respondents Sands and Thompson with alleged conspiracy consists of:

(1) Substitution of themselves as attorneys for Mrs. Haldane in the divorce proceedings after the alleged false imprisonment had already taken place;

(2) Obtaining a judgment against Mr. Haldane for attorneys' fees;

(3) Recordation of a judgment lien for attorneys' fees prior to the appeal to the California District Court of Appeal;

(4) Obtaining a final decree in the divorce suit.

After petitioner filed his complaint in the within action, Motions to Dismiss the Complaint for failure to state a claim upon which relief could be granted were filed by all defendants. The Motions were granted by the District Court with prejudice as to all defendants, and petitioner filed an appeal to the United States Court of Appeals for the Ninth Circuit. The Ninth Circuit, in a *Per Curiam* decision, affirmed the judgment of dismissal, stating that "The District Court's order dismissing with prejudice appellants complaint for damages under the Civil Rights Act, 42 U.S.C. 1985(3) was required by this Court's ruling in *Haldane vs. Chagnon* 345 F. 2d 601 (9th Cir., 1965). That decision binds this panel."

Petitioner now seeks from this Court a Writ of Certiorari to the Ninth Circuit Court of Appeals.

ARGUMENT.

1. Rule 19 of the Revised Rules of the Supreme Court of the United States reads, in part, as follows:

> "A review on Writ of Certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefore. . . ."

Rule 23(4) reads as follows:

> "The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition."

This respondent respectfully submits that the petitioner has failed, in his Petition for Writ of Certiorari, to show any "special and important reasons" for granting a Writ of Certiorari, and has failed to describe with "accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration." In short, the petitioner has failed to advance any cogent reasons, with any degree of clarity whatsoever, for the granting by his Honorable Court of a Writ of Certiorari.

The *Per Curiam* decision of the Ninth Circuit in the within action was based on the decision and holding in the previous Ninth Circuit action, *Haldane v. Chagnon*, 345 F. 2d 601. In said previous action, it was held that State Court Judges could not be sued under the Civil Rights Act, and in particular under 42 U.S.C. §1985-(3), for acts performed within the scope of their authority, because of the doctrine of judicial immunity.

The Court then pointed out that in the case before them, State Court Judges, when ordering petitioner to be detained temporarily for mental examinations pursuant to California Welfare and Institutions Code, Sections 5041 *et seq.* had been acting within the course and scope of their authority, and were therefore immune from suit under the Civil Rights Act for liability for any of said actions.

The Court went on to point out that since, under the doctrine of judicial immunity, the judges could not be sued, neither could attorneys be sued. The Court stated:

> "With the elimination of defendant judges and bailiff from the case, claims against defendant attorneys under the Civil Rights Act cannot be stated. The attorneys were not state officers, and they did not act in conspiracy with a state officer against whom appellant could state a valid claim. It follows that they did not, and could not commit alleged wrongful acts 'under color of state law or authority'; Hence, they were not subject to liability under the Civil Rights Act." 345 F. 2d 601, 604.

It is thus seen that the Ninth Circuit, in both the previous case and in the within action, relied on the doctrine of judicial immunity in denying a right of action against both judges and attorneys under the Civil Rights Act for the alleged wrongful acts. The petitioner has failed to advance any cogent reasons why this application of the doctrine of judicial immunity should be reviewed by this Court. In his "Reasons for Granting Writ" contained in his petition, petitioner has merely made a bold assertion that the "State Court's jurisdic-

tion of all proceedings was lost on March 8, 1961 (citing several cases)". Petitioner does not explain how the state courts lost jurisdiction, nor does he attempt to answer the discussion contained in *Haldane v. Chagnon, supra* at page 604, to the effect that the state court judges were acting entirely within their jurisdiction in ordering mental illness proceedings pursuant to California Welfare and Institutions Code Section 5041 *et seq.*

This honorable Court recently had occasion, in the case of *Pierson v. Ray,* 368 U.S. 547, 87 S. Ct. 1213, 18 L. Ed. 2d 288 (1967) to consider whether the doctrine of judicial immunity was applicable in a situation where a judge was being sued for a violation of the Civil Rights Act, specifically 42 U.S.C. §1983. In holding that the doctrine of judicial immunity was applicable in such a situation, Mr. Chief Justice Warren stated:

> "We find no difficulty in agreeing with the Court of Appeals that Judge Spencer is immune from liability for damages for his role in these convictions. . . . Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their jurisdiction. . . . This immunity applies even when the judge is accused of acting maliciously and corruptly. . . .
>
> "We do not believe that this settled principle was abolished by Section 1983, which makes liable any person who under color of law deprives another person of his civil rights. The legislative record gives no clear indication that Congress meant to abolish wholesale all common law immunities." 386 U.S. 547, 553.

See also the case of *Bradley v. Fisher,* 12 Wall. (80 U.S.) 335, 20 L. Ed. 464 (1871).

2. Petitioner has not advanced any reasons why the decision below should be reconsidered as to this particular respondent. It will be remembered that the "overt acts" of which respondent Thompson is accused consist of substituting himself as an attorney in the divorce proceedings, obtaining a judgment against Mr. Haldane for attorneys' fees, recordation of a judgment lien for attorneys' fees, and obtaining a final decree in the divorce suit. All of these alleged "overt acts" are clearly the activities of an attorney engaged in private litigation. It has been consistently held, at the Court of Appeals level, that acts of attorneys in the course of civil litigation are not actionable under the provisions of the Civil Rights Acts. Thus, in the case of *Skolnick v. Martin,* 317 F. 2d 855 (7th Cir. 1963) at page 857 it was said:

> "Lawyers who participate in the trial of private state court litigation are not state functionaries acting under color of state law within the meaning of the Federal Civil Rights Act."

See also the cases of *Bottone v. Lindsley,* 170 F. 2d 705 (10th Cir. 1948), and *Swift v. Fourth National Bank of Columbus, Georgia,* 205 F. Supp. 563 (USDC MD Ga. 1962).

Petitioner has not attempted in any way in his "Reasons For Granting Writ" to refute these principles, or to call them to the attention of this honorable Court. In fact, petitioner has urged no reasons at all to justify a reconsideration of the decision as to respondent Gordon Thompson.

Conclusion.

For the foregoing reasons, the petition for Writ of Certiorari should be denied.

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